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AMENDMENT NO. 5 TO  
DEBTOR IN POSSESSION  
CREDIT AGREEMENT

Dated as of September 17, 1999

by and among

BOSTON CHICKEN, INC.  
and the other Borrowers hereunder,  
Debtors and Debtors in Possession,

as Borrowers,

THE LENDERS SIGNATORY HERETO  
FROM TIME TO TIME,

as Lenders,

GENERAL ELECTRIC CAPITAL CORPORATION,

as Administrative Agent and a Lender,

and

BANK OF AMERICA, N.A.

as Collateral Agent and a Lender

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NONE

## **AMENDMENT NO. 5 TO DEBTOR IN POSSESSION CREDIT AGREEMENT**

THIS AMENDMENT NO. 5 TO DEBTOR IN POSSESSION CREDIT AGREEMENT (the "Fifth Amendment") is entered into as of September 17, 1999, by and among (i) BOSTON CHICKEN, INC., a Delaware corporation ("BCI") and the other Borrower parties to the "Existing DIP Credit Agreement" referred to below (each, individually a "Borrower" and collectively the "Borrowers"), (ii) each of the lenders listed on the signature pages hereof (each individually a "Lender" and collectively "Lenders"), (iii) GENERAL ELECTRIC CAPITAL CORPORATION, a New York corporation (in its individual capacity, "GE Capital"), for itself as a Lender and as Administrative Agent for Lenders, and (iv) BANK OF AMERICA, N.A. (in its individual capacity, "BofA"), for itself as a Lender and as Collateral Agent for Lenders (Administrative Agent and Collateral Agent being referred to collectively as "Agents"), with reference to the following facts, which shall be construed as part of this Fifth Amendment:

### **RECITALS**

A. Agents, Lenders, and Borrowers are parties to a Debtor in Possession Credit Agreement dated as of October 5, 1998, as amended by Amendment No. 1 to Debtor in Possession Credit Agreement dated as of February 24, 1999, Amendment No. 2 to Debtor in Possession Credit Agreement dated as of May 25, 1999, Amendment No. 3 to Debtor in Possession Credit Agreement dated as of June 29, 1999, and Amendment No. 4 to Debtor in Possession Credit Agreement dated as of August 30, 1999 (such agreement, as so amended, the "Existing DIP Credit Agreement"; capitalized terms not otherwise defined in the **Recitals** or in the **preamble** are as defined in the Existing DIP Credit Agreement as hereby amended).

B. Borrowers have requested, among other things, that Agents and Lenders reduce the Availability Reserve effective September 18, 1999, extend the previously granted waiver relating to any noncompliance by Borrowers with respect to the Minimum System EBITDAL Covenant for Retail Periods 7-8 of 1999, and grant a waiver with respect to the Minimum System EBITDAL Covenant for Retail Periods 9-10 of 1999, and Agents and Lenders have agreed, to the extent provided herein and subject to the terms and conditions hereof, to reduce the Availability Reserve and grant the requested waivers, in each case through October 8, 1999.

### **AGREEMENT**

NOW, THEREFORE, in consideration of the premises and the covenants hereinafter contained, the receipt and adequacy of which are hereby acknowledged, it is agreed as follows:

1. Ratification and Incorporation of Existing DIP Credit Agreement and Other Loan Documents; Release. Except as expressly modified under this Fifth Amendment, (a) each Borrower hereby acknowledges, confirms, and ratifies all of the terms and conditions set forth in, and all of its respective obligations under, the Existing DIP Credit Agreement and the other Loan Documents to which it is a party, and (b) all of the terms and conditions set forth in the Existing DIP Credit Agreement and the other Loan Documents are incorporated herein by this reference as if set forth in full herein. Without limiting the generality of the foregoing, each Borrower acknowledges and agrees that as of September 15, 1999, the aggregate outstanding principal amount of all Revolving Loans was \$[40,569,155.00]. Each Borrower represents that it has no offset, defense, counterclaim, dispute or disagreement of any kind or nature whatsoever with respect to the amount of the Revolving Loans or any other Obligations. Each Borrower hereby releases and discharges Agents and Lenders, in their respective capacities as such, together with their respective agents, attorneys, employees, heirs,

executors, administrators, officers, directors, successors and assigns, from any and all claims, causes of action and remedies (whether under the Bankruptcy Code or under other applicable law) arising out of, based upon or related to the Obligations, the Collateral or the Loan Documents or any actions taken by any such Person in connection therewith.

2. Limited Waiver by Agents and Lenders. Subject to the satisfaction of each of the conditions set forth in **Section 4** of this Fifth Amendment, Agents and Lenders hereby agree to waive, solely during the period from the Fifth Amendment Closing Date through and including October 8, 1999, any Event of Default that may occur as a result of Borrowers' failure to comply with the Minimum System EBITDAL Covenant for Retail Periods 7-10 of 1999 (it being understood that, from and after October 9, 1999, such waiver shall terminate and Agents and Lenders shall have all of their respective rights and remedies with respect to any such Event of Default).

3. Amendment of Existing DIP Credit Agreement. The Existing DIP Credit Agreement is hereby amended, as of the Fifth Amendment Closing Date, as follows (and all section references in this **Section 3** shall, unless the context otherwise requires, be references to sections in the Existing DIP Credit Agreement):

3.1 Section 1.3(b) (Mandatory Prepayments; ENBC Stock Proceeds). Delete **Section 1.3(b)** and replace it with the following:

(b) Mandatory Prepayments; ENBC Stock Proceeds:

(i) (x) *Subject to **Section 5.4(c)**, as soon as practicable after receipt by or for the benefit of any Borrower of any insurance proceeds, Borrowers shall pay to Administrative Agent an amount equal to 100% of the amount received. Any prepayment under this **clause (x)** shall be applied in accordance with **Section 1.3(c)**;*

(y) *As soon as practicable after receipt by or for the benefit of any Borrower of any federal, state or local tax refunds, Borrowers shall pay to Administrative Agent an amount equal to 100% of the amount received less the amount of any offsets and adjustments for reasonably anticipated or disputed tax liabilities or deficiencies which are not provided for in the Budget (provided, that Borrowers shall have provided Agents with written notice specifying the amount, and the basis of calculating, any such offsets or adjustments). Any prepayment under this **clause (y)** shall be applied in accordance with **Section 1.3(c)**; and*

(z) *Subject to the proviso to this **clause (z)** and (with respect to Subject Asset Sales) **clause (b)(iii)** below, as soon as practicable after receipt by or for the benefit of any Borrower of the Net Cash Proceeds of, without duplication,*

*(1) any sale, transfer or other disposition of any tangible or intangible asset of any Borrower, regardless of how such transaction is characterized*

*(excluding proceeds of any disposition of (I) assets in the ordinary course of business (it being understood that any transaction involving the rejection, assignment, assumption or other disposition of leases, or the sale of equipment at closed stores, is not a disposition of assets in the ordinary course of business) or (II) any ENBC Stock), including condemnation proceeds, proceeds from the rejection, assumption, assignment or other disposition of any lease (including from the Home Depot Transaction), and any refunds of security or other deposits received any time after the Closing Date which refunds are in excess of \$3,000 individually or in a series of related transactions, and*

*(2) the Harry's Transaction (it being understood that nothing herein shall be deemed to be an acknowledgment by Borrowers that the proceeds of the Harry's Transaction are the proceeds of an "asset disposition" or by Agents or Lenders that they are not),*

*Borrowers shall pay to Administrative Agent an amount equal to such Net Cash Proceeds; provided, that for purposes of this **clause (z)**, Borrowers shall not be deemed to have received any proceeds which are subject to third party claims and are deposited, pending the resolution of such claims, in a segregated cash collateral account pursuant to an Order of the Bankruptcy Court until such funds are authorized to be disbursed pursuant to an Order of the Bankruptcy Court or as agreed by Administrative Agent. Any prepayments under this **clause (z)** shall be applied in accordance with **Section 1.3(c)**.*

*(ii) Immediately upon receipt by or for the benefit of BCI of proceeds of any disposition of the ENBC Stock, BCI shall pay the Net Cash Proceeds thereof as follows:*

*(A) (x) 25% thereof plus (y) the lesser of (1) 25% thereof and (2) the aggregate unpaid Deferred Adequate Protection Payments of the 1996 Lenders, shall be paid to the Common Collateral Agent in accordance with the 1996 Adequate Protection Order; and*

*(B) the amount remaining after the payments described in the preceding clause (A) shall be paid to Administrative Agent and shall be applied as provided in **Section 1.3(c)** .*

*(iii) With respect to any sale or other disposition by any*

*Borrower of operating assets no longer used or useful in the conduct of Borrowers' business (any such sale, a "Subject Asset Sale"):*

(A) *as to any individual Subject Asset Sale (or related series of sales) with respect to which the Net Cash Proceeds is \$50,000 or more, the Net Cash Proceeds thereof shall, immediately upon receipt by any Borrower, be payable to Administrative Agent pursuant to **Section 1.3(b)(i)(z)**; and*

(B) *100% of the Net Cash Proceeds of all other Subject Asset Sales that are received by Borrowers during any Fiscal Quarter, as reflected in the reports delivered pursuant to **paragraph (d)(iii) of Annex E** (or as otherwise determined in a manner that is acceptable to Administrative Agent), shall be payable to Administrative Agent pursuant to **Section 1.3(b)(i)(z)** within five Business Days after delivery of the relevant Financial Statements relating to such Fiscal Quarter.*

*As soon as practicable before any mandatory prepayment is made under this **Section 1.3(b)** (or concurrently therewith if prior notice cannot be given), Borrower Representative shall deliver to Administrative Agent a written notice in substantially the form of **Exhibit 1.3(b)** (a "Notice of Mandatory Prepayment") with respect to such prepayment. Notwithstanding anything to the contrary in the foregoing, the advance royalty payment payable by the H.J. Heinz Company to BCI pursuant to the License Agreement dated as of February 9, 1999 shall not be subject to the provisions of this **Section 1.3(b)**.*

- 3.2 Section 1.3(c) (Application of Mandatory Prepayments; Reduction of Commitments; Appraisal Expense). Delete **clause (B)** of **Section 1.3(c)(i)** and replace it with the following:

(B) *upon the application of any prepayment pursuant to **clause first** of the preceding **clause (i)(A)** other than the "Specified Prepayments" (as defined below), the Revolving Loan Commitments shall be permanently reduced in an amount equal to the amount of such prepayment; provided, that with respect to the first \$900,000 of such prepayments (or such greater amount, up to a maximum of \$1,000,000, as is agreed to in writing by Agents) that are made after the Second Amendment Closing Date (excluding the Specified Prepayments), such reduction of the Revolving Loan Commitments shall be provisional in nature (such provisional reduction of the Revolving Loan Commitments, the "Provisional Commitment Reduction"), and shall only become permanent to the extent provided in, and at the time*

specified in, **clause (ii)(B)** below. With respect to (x) the first \$4,250,000 of Net Cash Proceeds (without regard to Net Cash Proceeds from the Home Depot Transaction) and (y) the first \$750,000 of Net Cash Proceeds of the Home Depot Transaction, in each case that are paid to Administrative Agent after the Fifth Amendment Effective Date pursuant to **Section 1.3(b)(i)(z)** (all of the foregoing, the "Specified Prepayments"), there shall be no permanent reduction of the Revolving Loan Commitments upon the application of such prepayments pursuant to **clause first** of the preceding **clause (i)(A)**, provided, that unless and until the required 1996 Lenders have consented to the use of the proceeds constituting the Specified Prepayments, the Revolving Loan Commitments shall be provisionally reduced by the amount of the Specified Prepayments, which provisional reductions shall be reversed when such consent has been obtained).

- 3.3 Section 5.1 (Maintenance of Existence and Conduct of Business). Delete **clause (c)** of **Section 5.1** and replace it with the following:

(c) maintain, keep, and preserve all of its material properties (tangible and intangible) necessary or useful in the proper conduct of its business in good working order and condition consistent with industry practice, ordinary wear and tear excepted; provided, that (i) leased Stores may only be closed (A) in the ordinary course of business and upon the expiration of the underlying leases (in which event Borrower Representative shall give prompt written notice to each Agent) or (B) with the written consent of Agents, and (ii) owned Stores may only be closed with the written consent of Agents; Lenders hereby consent to the closure of Store 1127 in connection with the Home Depot Transaction so long as such transaction is modified to provide for the payment of no less than \$750,000 in cash to Borrowers upon the effective date of the rejection of the relevant lease.

- 3.4 Section 8.1 (Events of Default). Delete **clause (l)** of **Section 8.1** and replace it with the following:

(l) (i) the Fifth Amendment Order shall not have become a final order in accordance with its terms on or before the date specified in the second sentence of **Paragraph 5** thereof;

(ii) the Exclusivity Extension Order or any of the DIP Financing Orders shall be reversed, modified or revoked;

(iii) an appeal from the entry of the Fifth Amendment Order shall be timely filed and a stay pending appeal shall have been granted; or

(iv) any Borrower shall take any action to modify the Exclusivity Extension Order or any action that is inconsistent with the Exclusivity Extension Order,

in any case under the foregoing **clauses (i)-(iv)** without Requisite Lenders' written consent.

3.5 Annex A (Definitions; Rules of Construction). **Annex A** shall be amended as follows:

a. Amended Definitions. The definitions of each of the following terms in **Annex A** shall be deleted and replaced with the new definition for such term provided below (or, in the case of the definition of "Availability Reserve," amended as provided below):

*"Availability Reserve" –delete **clause (14)** of the definition of "Availability Reserve" and the proviso to such definition and replace them with the following **clauses (14)-(17)** and proviso:*

<i><b>Period</b></i>	<i><b>Availability Reserve Amount</b></i>
<i>(14) September 18, 1999-September 24, 1999</i>	<i>\$3,000,000</i>
<i>(15) September 25, 1999-October 1, 1999</i>	<i>\$2,000,000</i>
<i>(16) October 2, 1999-October 8, 1999</i>	<i>\$2,500,000</i>
<i>(17) October 9, 1999 and thereafter</i>	<i>\$7,000,000</i>

*provided, that Requisite Lenders may from time to time, in their sole and absolute discretion, agree to reduce any of the foregoing amounts (whether temporarily or permanently), which agreement must be in writing signed by Requisite Lenders; and provided, further, that with respect to each Specified Prepayment, as and when such Specified Prepayment is made (or, as to any such Specified Prepayment that is made before the consent described in the proviso to the last sentence of **Section 1.3(c)(i)(B)** has been obtained, as and when such consent has been obtained), the Availability Reserve amounts then in effect pursuant to **clauses (14)-(17)** above (as such amounts may have previously been adjusted pursuant to this proviso) shall be automatically increased by an amount equal to the amount of such Specified Prepayment.*

*"Net Cash Proceeds" means, in the case of any sale or other disposition of assets, cash payments received (including any cash received by way of deferred payment pursuant to a note receivable or otherwise, but only as and when so received) by or for the benefit of any Borrower from such sale or disposition, less (i) the amount of reasonable and customary fees and commissions payable to non-Affiliates of Borrowers, (ii) any other normal expenses of sale, including reasonable costs and expenses related to such sale or other disposition that are to be paid in cash, and (iii) amounts payable to holders of senior Liens (to the extent such Liens constitute Permitted Senior Encumbrances hereunder and such payments are approved by the Bankruptcy Court), if any.*

b. New Definitions. Each of the following definitions shall be added to **Annex A**:

*"Fifth Amendment" means "Amendment No. 5 to Debtor in Possession Credit Agreement" dated as of September 17, 1999, and all appendices, annexes, exhibits or schedules thereto.*

*"Fifth Amendment Approval Order" means an order of the Bankruptcy Court, substantially in the form of **Exhibit A** to the Fifth Amendment, authorizing each Borrower to execute the Fifth Amendment and perform under the terms of the Agreement and the other Loan Documents as amended by the Fifth Amendment.*

*"Fifth Amendment Closing Date" means the Business Day on which all conditions precedent to the effectiveness of the Fifth Amendment have been satisfied or waived in writing by Requisite Lenders.*

*"Home Depot Transaction" means the transaction described in Borrowers' "Motion for Authority to Compromise Controversy; Motion to Reject Non-residential Real Property Lease; Motion to Withdraw Motion to Assume Non-residential Real Property Lease" filed on September 7, 1999.*

*"Specified Prepayments" – see **Section 1.3(c)(i)(B)**.*

4. Conditions Precedent To Obligations. Notwithstanding any other provision of this Fifth Amendment, this Fifth Amendment shall be of no force or effect, and Agents and Lenders shall have no obligations hereunder, until the following conditions have been satisfied, in Requisite Lenders' sole discretion, or waived in writing by Requisite Lenders:

4.1 Fifth Amendment and Related Materials; Satisfactory Legal Form. Agents and Lenders shall have received this Fifth Amendment duly executed by Borrowers (and other parties) party hereto and delivered to Agents and Lenders, and all of the other documents, instruments, certificates, opinions, agreements and other materials listed in the Schedule of Documents attached as **Annex D-5**, each in form and substance satisfactory to Agents. All legal matters incident to the transactions contemplated by this Fifth Amendment shall be satisfactory to Agents and their counsel.

4.2 Motion re: Fifth Amendment. Borrowers shall have filed with the Bankruptcy Court and served on the necessary parties in the Chapter 11 Cases a motion, in form and substance acceptable to Agents, seeking Bankruptcy Court approval of the Fifth Amendment Approval Order.

4.3 Entry of Fifth Amendment Approval Order. The Bankruptcy Court shall have entered the Fifth Amendment Approval Order, and the date specified in the second sentence of **Paragraph 5** thereof shall be no later than September 24, 1999.

4.4 Certain Expenses. Borrowers shall have reimbursed Agents for the outstanding reasonable fees and expenses of Hal Sieling & Associates and Consor for services that such entities performed for the benefit of Agents and Lenders.

5. Condition Subsequent. On or before September 30, 1999, the Adequate Protection Orders shall have been amended, by orders entered by the Bankruptcy Court in form and substance acceptable to Requisite Lenders (which orders shall, among other things, provide for the deferral of the adequate protection payments otherwise payable on October 1, November 1 and December 1, 1999). Borrowers' failure to satisfy the foregoing condition subsequent shall be an Event of Default under the DIP Credit Agreement.

6. Representations and Warranties.

6.1 Corporate Power; Authorization; Enforceable Obligations. The execution, delivery and performance by each Borrower of this Fifth Amendment: (i) is within such Borrower's corporate power; (ii) has been duly authorized by all necessary or proper corporate action; (iii) is not in contravention of any provision of such Borrower's certificate of incorporation or by-laws; (iv) will not violate any law or regulation, or any order or decree of any court or governmental instrumentality; (v) will not conflict with or result in the breach or termination of, constitute a default under, or accelerate any performance required by, any material indenture, mortgage, deed of trust, lease, agreement or other instrument to which such Borrower is a party or by which such Borrower or any of its property is bound, except as disclosed on Schedule 5.1 to the First Amendment; (vi) will not result in the creation or imposition of any Lien upon any of the property of such Borrower other than those in favor of Collateral Agent, for the benefit of Collateral Agent, Administrative Agent and Lenders, all pursuant to the Loan Documents; and (vii) do not require the consent or approval of any Governmental Authority or any other Person. This Fifth Amendment has been duly executed and delivered for the benefit of or on behalf of each Borrower and constitutes a legal, valid and binding obligation of each such Borrower, enforceable against it in accordance with its terms.

6.2 Representations and Warranties in Existing DIP Credit Agreement. Each Borrower hereby represents and warrants that the representations and warranties of such Person contained in **Section 3** of the Existing DIP Credit Agreement, as amended hereby, are true and correct as of the date hereof (other than changes that have occurred as a result of actions taken by Borrowers pursuant to, or as authorized by, any order of the Bankruptcy Court that has been entered in the Chapter 11 Cases prior to the date hereof). For purposes hereof, as to any representation or warranty which by its terms expressly applied only as of the Closing Date (whether the phrase "as of the Closing Date," "as of the date hereof," "on the date hereof," or some other similar phrase was used), such representation and warranty shall be deemed to have been made as of the Fifth Amendment Closing Date.

7. Miscellaneous.

7.1 Headings. The various headings of this Fifth Amendment are inserted for convenience of reference only and shall not affect the meaning or interpretation of this Fifth Amendment or any provisions hereof.

7.2 Counterparts. This Fifth Amendment may be executed by the parties hereto in several counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.

7.3 Interpretation. No provision of this Fifth Amendment shall be construed against or interpreted to the disadvantage of any party hereto by any court or other governmental or judicial authority by reason of such party's having or being deemed to have structured, drafted or dictated such provision.

7.4 Complete Agreement. This Fifth Amendment constitutes the complete agreement between the parties with respect to the subject matter hereof, and supersedes any prior written or oral agreements, writings, communications or understandings of the parties with respect thereto.

7.5 Governing Law. This Fifth Amendment shall be governed by, and construed and enforced in accordance with, the laws of the State of New York applicable to contracts made and performed in such state, without regard to the principles thereof regarding conflict of laws.

7.6 Effect. Upon the effectiveness of this Fifth Amendment, each reference in the Existing DIP

Credit Agreement to "this Agreement," "hereunder," "hereof" or words of like import, shall mean and be a reference to the Existing DIP Credit Agreement as amended hereby and each reference in the other Loan Documents to the Credit Agreement, "thereunder," "thereof," or words of like import shall mean and be a reference to the Existing DIP Credit Agreement as amended hereby.

7.7 Conflict of Terms. In the event of any inconsistency between the provisions of this Fifth Amendment and any provision of the Existing DIP Credit Agreement, the terms and provisions of this Fifth Amendment shall govern and control.

7.8 No Novation or Waiver. Except as specifically set forth in this Fifth Amendment, the execution, delivery and effectiveness of this Fifth Amendment shall not (i) limit, impair, constitute a waiver by, or otherwise affect any right, power or remedy of, Agents or any Lender under the Existing DIP Credit Agreement or any other Loan Document, (ii) constitute a waiver of any provision in the Existing DIP Credit Agreement or in any of the other Loan Documents or of any Default or Event of Default that may have occurred and be continuing, or (iii) alter, modify, amend or in any way affect any of the terms, conditions, obligations, covenants or agreements contained in the Existing DIP Credit Agreement or in any of the other Loan Documents, all of which are ratified and affirmed in all respects and shall continue in full force and effect.

7.9 Rules of Construction. The rules of construction set forth in **Annex A** to the Existing DIP Credit Agreement shall govern this Fifth Amendment. Unless otherwise indicated, all references in this Fifth Amendment to sections, subsections, schedules, exhibits, annexes and attachments shall refer to the corresponding sections, subsections, schedules, exhibits, annexes and attachments of or to the Existing DIP Credit Agreement. All schedules, exhibits, annexes and attachments hereto, or expressly identified in this Fifth Amendment, are incorporated herein by reference, and taken together, shall constitute but a single agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 5 to Debtor in Possession Credit Agreement as of the day and year first above written.

SIGNATURE PAGES OMITTED